

Notice of Allowability

Application No.

09/628,186

Examiner

David A. Saunders, PhD

Applicant(s)

CHINN, PAUL

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment of 1/6/05.
2. ☒ The allowed claim(s) is/are 1-16,18 and 49-74.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17:2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date Paper No. 11.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

1) A sua sponte examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The specification has been amended as follows:

At page 1, in the insert entered by preliminary amendment on 7/28/00, at line 3 thereof, after "1999" inserted - -and now abandoned--.

At page 17, line 7, after "08/475,813" inserted - -(now Pat. No. 6,682,734)--.

2) The following is an examiner's statement of reasons for allowance:

The amendment filed on 1/6/05 has overcome all rejections of record in the action of 8/6/04. Among new claims 64-74, applicant did not point out support for new claim 69; support is found at page 11, line 21.

Of prior art previously cited in the action of 10/28/02, Mather et al teach a high labeling efficiency (>95%) at modest specific activities (1 mCi/mg); see abstract. Mather et al teach adding the 90-Y to chelator-antibody at a ratio of 5 mCi/mg, in the labelling reaction mixture (p. 308, col. 1, under "Effect of Yttrium: antibody ratio"). They also note, however, that this increase in the 90-Y to chelator-antibody ratio "resulted in an increase in specific activity of only 1.4-2.6" (p. 309, col. 2, under "Effect of Yttrium: antibody ratio"). Mather et al thus did not achieve a "specific activity of at least about 5 mCi/mg" as required in instant claim 1. Chinol et al achieved specific activities of 1-3 mCi/mg in complexing 90-Y with a chelator-antibody; see abstract;

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page 1468, col. 1; page 1470, col. 1. Chinol et al thus did not achieve a "specific activity of at least about 5 mCi/mg" as required in instant claim 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3) Below examiner's signature, note a copy of the index of the claims showing renumbering at allowance.

4) Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, PhD whose telephone number is 571-272-0849. The examiner can normally be reached on Mon.-Thu., 8:00 am-5:30 pm and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Saunders
 DAVID SAUNDERS
 PRIMARY EXAMINER
 ART UNIT 182/644

Typed 3/16/05 DAS

<input type="checkbox"/> Claims renumbered in the same order as presented by applicant		<input type="checkbox"/> CPA		<input type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
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